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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2018/2010

Views adopted by the Committee at its 112nd session (7–31 October 2014)

Submitted by:	Kedar Chaulagain (represented by counsel, Mandira Sharma, Advocacy Forum-Nepal, and Carla Ferstman, Redress Fund)
Alleged victims:	The author and his deceased daughter, Subhadra Chaulagain
State party:	Nepal
Date of communication:	7 December 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 December 2010 (not issued in document form)
	The Committee's decision on admissibility of 8 March 2012 (CCPR/C/104/D/2018/2010)
Date of adoption of Views:	28 October 2014
Subject matter:	Arbitrary arrest and detention, torture, inhuman and degrading treatment, and subsequent extrajudicial killing of a girl suspected of being a member of the Communist Party (Maoist)
Substantive issues:	Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of the person; respect for the inherent dignity of the human person; right to an effective remedy; equal protection of the law
Procedural issues:	Non-exhaustion of domestic remedies
Articles of the Covenant:	2 (para. 3) in conjunction with 6, 7, 9, 10 and 26
Articles of the Optional Protocol:	2 and 5 (para. 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 2018/2010*

Submitted by:	Kedar Chaulagain (represented by counsel, Mandira Sharma, Advocacy Forum-Nepal, and Carla Ferstman, Redress Fund)
Alleged victims:	The author and his deceased daughter, Subhadra Chaulagain
State party:	Nepal
Date of communication:	7 December 2010 (initial submission)
Decision on admissibility:	8 March 2012

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 October 2014,

Having concluded its consideration of communication No. 2018/2010, submitted to the Human Rights Committee on behalf of Kedar Chaulagain under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Kedar Chaulagain, a Nepalese national born in 1958. The communication is submitted in his own name and on behalf of his deceased daughter, Subhadra Chaulagain, also a Nepalese national, born in 1986. The author claims that Nepal violated his daughter's rights under articles 6, 7, 9 and 10, all read in conjunction with article 2, paragraph 3, and also separately under article 26; as well as his own rights

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The text of an individual opinion by Committee members Víctor Manuel Rodríguez-Rescia and Fabián Omar Salvioli is appended to the present Views.

under article 7, read in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Nepal on 14 August 1991. The author is represented by counsel.

1.2 On 7 April 2011, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication separately from the merits.

The facts as presented by the author

2.1 On the night of 12 February 2004, around fifty to sixty uniformed members of the then Royal Nepal Army armed with M16 rifles conducted a "sweep" operation in Ward No. 3, Pokhari Chauri Village, Kavre District. They were accompanied by an informant, Mr. A.C., a resident of the village. At around 11 p.m., they surrounded the house of Ms. D.C., the author's sister, and searched it for evidence of Maoist activity. Three soldiers began searching the upstairs of the house in the presence of the author, his 14-year-old son and Subhadra, who was 17 years old at that time, while one remained downstairs with the author's wife, holding a gun to her chest. As the three soldiers did not find anything, they went back downstairs. One of the soldiers then said "There are no Maoists here".

2.2 Then Mr. A.C. came into the house, and looked around. When he saw Subhadra, he pointed to her and said "There is the Maoist, catch her!" One of the soldiers grabbed hold of Subhadra's hair and slammed her head down on the floor so hard it broke a floorboard and a beam in the ceiling below. Then, Subhadra and the author were taken outside their house.

2.3 When the author was at the front door of the house, he could see that his daughter was standing by the cowshed and there were four soldiers with her. One of them told her to walk towards a neighbouring house, so she began to walk there whilst one soldier pressed his gun into her back and the others had their guns aimed at her.

2.4 The author was taken to the area by the cowshed as Subhadra was led around the side of the neighbouring house. Seven soldiers accompanied him and when they reached the cowshed one pushed the barrel of his gun into the author's chest while six others surrounded him, pointing their guns at his chest.

2.5 The soldiers verbally abused Subhadra and called her a "slut". They then took her to the porch of the neighbouring house and surrounded her with their guns pointing at her whilst she cried. The soldiers threatened to kill Subhadra and began to question her about Maoist activities in the area. She replied that nobody was joining the Maoists that she knew of and that she was a student and not a Maoist. After about an hour the soldiers marched her along to a spot near a banana tree. The author saw Subhadra standing and facing the soldiers. One of them opened fire, however the weapon failed. Another soldier handed him a rifle, and he forced it into Subhadra's stomach. He opened fire on her and the force from the shot caused her body to slam down into the field below. The other three soldiers then pointed their guns down at her and opened fire. Four other soldiers ran towards her and began kicking and stamping on her body, causing her intestines to spill out of the gunshot wound in her body to the ground.

2.6 The soldiers then began kicking the author and striking him in the face with the butts of their rifles repeatedly until they believed him to be dead. The author was left on the ground unconscious and bleeding.

2.7 Later that night, uniformed army men also visited the house of Ms. R.R., a close friend of Subhadra's who lived only a few houses away in the same village. They took her from her home, interrogated her and then allegedly raped her before shooting her. A young boy called T.L. in the same village was also shot.

2.8 Later that day, the national radio station broadcasted news that "three terrorists, namely Ms. R.R., Subhadra Chaulagain and T.L., in Pokhari Chauri Village of Kavre District were shot dead in an encounter with the security forces".

2.9 On the day following Subhadra's extrajudicial killing, the author made an oral complaint to the District Police Office in Kavre. However, instead of listening to what he had to say, the police officers threatened him and sent him away. The author therefore lodged a complaint with the Chief District Officer, and left Subhadra's body exactly as it was found in the hope that the police would investigate.

2.10 On that same day, the author also contacted lawyers at Advocacy Forum-Nepal and informed them about his daughter's killing. Four or five days after the incident,[1] they visited the scene, took photographs of the body and collected witness statements. As no police came to examine the body, or commenced any kind of investigations, the last rites were performed on the body of the author's daughter. The body was never given an autopsy and has never been exhumed for examination.

2.11 On 29 February 2004, the author made an application to the National Human Rights Commission (NHRC), asking for an investigation to be undertaken. The NHRC conducted an investigation into the case, together with that of Ms. R.R. It concluded, in June 2005, that Subhadra had been unlawfully killed, and recommended that the Government identify and take legal action against the security personnel involved in the killing and provide 150,000 rupees to each of the families as compensation.

2.12 On 8 June 2006, soon after the end of the armed conflict, the author filed a First Information Report with the District Police Office (DPO) for murder. The author included details of the Royal Nepal Army's search team that had been in the village on 12 and 13 February 2004, specifically mentioning brigade No. 9 from Bhakundebesi (Kavre), led by a lieutenant.

2.13 As the police did not conduct an investigation, on 8 October 2007 the author submitted a writ petition to the Supreme Court requesting a mandamus order and other necessary orders from the court. Since no effective investigation had been undertaken since the filing of the First Information Report (FIR) more than one year previously, seeking a court order was a necessary step to try and force the police to investigate.

2.14 The District Attorney's Office submitted a written reply on 23 November 2007, asking the Court to quash the writ petition on the basis that all necessary investigations into the case had been made. Specifically, the police had written a letter to brigade No. 9 at Bhakundebesi, requesting documents stating the name of the commander who had led the search team in Pokhari Chauri village and killed Subhadra. A written reply from brigade No. 9 at Bhakundebesi had been received on 14 August 2006, stating that the search team had been led by lieutenant S.B., and that junior army staff D.T.M. had commanded the operation to surround Subhadra's home and arrest her. However, they claimed that Subhadra had tried to escape, which was why she had been shot. The DPO then sent a letter to the Zonal Police Office (ZPO) requesting that all soldiers involved in the search team under lieutenant S.B. be summoned to the DPO and information such as their names, surnames and current posting be given to the DPO. No response was received. The request to quash the writ petition concluded that the exchange of correspondence "has fulfilled all liability remaining under the jurisdiction of this office to arrest the guilty as per the applicant's demand".

2.15 In its response to the court, the District Attorney's Office claimed that if the report with documents attached to it had been received from the DPO, Kavre, the Office would

[1] Ward No. 3, Pokhari Chauri village, Kavre District, is located almost 150 kilometres from Dhulikhel, the district headquarters. It is extremely difficult to access during the dry season and access is virtually impossible during the monsoon.

certainly have fulfilled its legal duties, such as preparing a charge-sheet and putting it before the Court. However, since the Office had not received any documents, it had not violated the constitutional and legal rights of the applicant.

2.16 On 14 December 2009, the Supreme Court made a mandamus order stating, inter alia under the States Cases Act 1992, that the applicant had fulfilled his duties by making both an oral complaint that the crime had occurred and filing an official FIR. However, the DPO had failed in its duties under the States Cases Act. As to the role of the District Attorney's Office, the Order indicates that, whilst the police office bears the main responsibility for investigating a case, the States Cases Act gives the district attorney the right to give directions. The court ordered that:

> "a mandamus has been issued … to conduct prompt investigation as per the FIR. Similarly, a judicial stricture has been issued against Police Headquarters, Mid-regional Police Office and ZPO, Bagmati to become serious and proactive and alert to take necessary and appropriate steps as they have continuously shown indifference to fulfilling the duty of investigation. Likewise, the judicial stricture has also been issued against the Attorney General's Office of Nepal to direct the district attorney of the related district attorney's office to become serious in investigation and take prompt, appropriate and substantial step to it. The district attorney also should be asked to play a directive and coordinating role with the police personnel. It was found that the district attorney was passive in fulfilling his legal duties by failing to give necessary directions to the relating police personnel".[2]

2.17 While the author has never received any compensation as a result of the findings and recommendations of the NHRC, in February 2010 the Government provided 100,000 rupees as "interim relief" from the Interim Relief Fund for "conflict victims", including the families of victims of extrajudicial killings. The author collected that money from the Kavre Chief District Officer in Dhulikhel.

2.18 The author refers to article 5, paragraph 2 (b), of the Optional Protocol and submits that the application of domestic remedies is unreasonably prolonged. He recalls that the incident occurred on 12 February 2004 and thus far, there has been no official investigation into it, despite the recommendation from the NHRC of 14 June 2005 and the mandamus order issued by the Supreme Court on 14 December 2009. Although the Supreme Court found that the police had deliberately delayed proceedings, not only in his case but also on a number of occasions in similar cases, almost nothing has happened.

2.19 The author notes that the acts he complains about occurred on 12 and 13 February 2004, when the Terrorist and Disruptive Activities (Control and Punishment) Ordinance of 2001 was in force. Section 5 of the Ordinance grants the security forces special powers to prevent terrorist and disruptive activities, including the power to arrest without a warrant any person who is "suspected" of being involved in a terrorist or disruptive activity,[3] and the power to use arms against anyone who resists arrest on those grounds.[4]

2.20 The author submits that impunity towards suspects of crimes allegedly perpetrated by State actors exists both de jure and de facto.[5] The Police Act (1955) provides immunity for Chief District Officers or for any police personnel "for action taken … in good faith while discharging … duties".[6] The Police Act also contains a long list of crimes for which

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[2] Unofficial translation provided by the author.

[3] Terrorist and Disruptive Activities (Control and Punishment) Ordinance, sect. 5 (a).

[4] Ibid., sect. 5 (d).

[5] The author refers to the report of Advocacy Forum and Human Rights Watch, "Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict" (2008), p. 16. Available from www.hrw.org/reports/2008/09/11/waiting-justice-0.

[6] Police Act, sect. 37.

police personnel may be disciplined. No individual criminal liability is established on that list for, among other acts, human rights violations and extrajudicial killings.[7] Furthermore, even when the Supreme Court has instructed the police to file a First Information Report against such individuals, little or no action has been taken by the police.

2.21 The author adds that the Army Act (1959) also provides immunity against prosecution to all members of its forces when the acts in question took place while discharging duties. Section 24 A indicates that "in case any person dies or suffers any loss as a result of any action taken by any person to whom this act is applicable while discharging his duties, no case may be filed in any court against him". The Army Act does include a provision requiring investigations and courts martial for breaches of the Act, yet in the limited numbers of cases in which courts martial have taken place, the victims have not had access to the proceedings and the results have not been conveyed to them.[8] Furthermore, the Public Security Act (1989) provides immunity for any acts committed by State officials in good faith during the course of duty.[9] Therefore, even if the case was investigated and brought before the courts, the accused members of the Army would most probably invoke those provisions in order to avoid prosecution. Moreover, a thriving culture of impunity surrounding members of the security forces in Nepal prevents the effectiveness and availability of domestic remedies.

The complaint

3.1 The author submits that the lethal force used against his daughter was disproportionate and unnecessary, and violated article 6 of the Covenant. Furthermore, since no effective investigations have been undertaken to date into his daughter's killing, the State party is also in breach of its obligations under article 6, read in conjunction with article 2, paragraph 3, of the Covenant. Moreover, the author claims that the criminal justice system of Nepal provides no procedural guarantees for a fair and public hearing by a competent, independent and impartial tribunal, which constitutes an additional violation of article 6, read in conjunction with article 2, paragraph 3, of the Covenant. There is little independence and impartiality in the State party in cases in which a State agent is the defendant.

3.2 The author is concerned that a military court could be convened in the present case, instead of those responsible being tried in civilian courts. Decisions made by military tribunals cannot be appealed and hearings are closed to the public. A trial before a military court would be in breach of his rights under article 6, read in conjunction with article 2, paragraph 3, of the Covenant.[10] Furthermore, the penalties handed down by military courts are not commensurate with the violations suffered, as they are purely disciplinary. That constitutes a further breach of article 6, read in conjunction with article 2, paragraph 3.

3.3 The author submits that the circumstances of Subhadra's arrest and execution amount to a violation of article 7 of the Covenant. The fact that the first weapon fired at her failed amounted to a mock execution, even if that was unintentional. That amounts to a breach of article 7 of the Covenant. Furthermore, his daughter was attacked, shot and then brutally beaten, which is also a violation of article 7.

3.4 The author argues that the verbal abuse and death threats directed at his daughter before she was killed amount to degrading treatment and constitute a violation of article 7. He underlines that Subhadra was repeatedly called a "slut", a word with strong sexual connotations, intended to degrade both Subhadra and the author himself.

[7] Police Act, chap. 6.

[8] "Waiting for Justice", p. 48.

[9] Public Security Act, sect. 22.

[10] The author refers to principle 29 of the updated Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1).

3.5 Additionally, the author submits that the treatment he received, both the severe beatings, the fact that he was forced to watch the execution of his daughter, and the ensuing impunity of the perpetrators, amount to torture in violation of article 7.

3.6 The author submits that his daughter was not a Maoist, and if membership of a proscribed organization constitutes an offence under Nepali law, the arrest of a 17-year-old unarmed girl by a group of armed soldiers without an arrest warrant and in the middle of the night is unjustifiable and a violation of article 9 of the Covenant. The author submits that, while in detention, Subhadra was not treated "with humanity and with respect for the inherent dignity of the human person", which amounts to a violation of article 10 of the Covenant.

3.7 The author claims that the lack of "equal protection of the law" in the present case constitutes a violation of article 26 of the Covenant. Under the Muluki Ain (National Legal Code), chapter 10 "On Homicide" section 13, a person who intentionally commits an act of murder will be subject to life imprisonment and confiscations of all property and possessions. However, as those who killed Subhadra are State agents, they can avoid prosecution. Furthermore, due to the unified command system,[11] it was extremely difficult for the police to conduct investigations in cases involving an army officer, as often that army officer would be their superior. As explained above, there are a number of provisions in domestic law which allow State agents to escape prosecution for crimes for which an ordinary citizen would be prosecuted.

3.8 The author invites the Committee to request the State party to carry out a full and effective criminal investigation into the allegations capable of leading to the prosecution of all those responsible, both the persons who carried out the acts and those who directed or otherwise authorized or acquiesced to the actions. He further asks the Committee to direct the State party to afford full and effective compensation for the breach of rights, including financial compensation for all pecuniary and non-pecuniary losses, restitution of rights, rehabilitation, measures of satisfaction and guarantees of non-repetition. As to the general measures, he asks that the State party reform its laws and institutions to ensure sufficient safeguards against the recurrence of that kind of violation.

State party's observations on admissibility

4.1 By note verbale of 15 March 2011, the State party submitted its observations, challenging the admissibility of the communication on the ground of non-exhaustion of domestic remedies. On 5 June 2006, a First Information Report was lodged by the author to the DPO (Kavre), alleging that the search operation force commanded by the lieutenant of brigade No. 9 had killed his daughter. On 14 December 2009, the Supreme Court issued a mandamus, ordering prompt completion of investigations in relation to the FIR. Following the mandamus order, the Law Section of the Police Headquarters issued directives to all subordinate police officers to conduct prompt and effective investigations. Following the Supreme Court's order, the DPO (Kavre) expedited the investigation process. Depositions of two witnesses were recorded by the DPO on 23 April 2010. The author's wife was also heard on 30 August 2010. On 21 January 2011, the Area Police Office (Kattike) visited the crime scene and "executed a deed on the spot".[12] The State party adds that "further requisite investigation is being carried out by the police expeditiously in accordance with the laws in force".

[11] The Army was under the direct control of the monarchy at the time that Subhadra was killed, and both the police and the Armed Police Force were placed under the unified command of the Royal Nepal Army between November 2001 and April 2006. Therefore police officers under that unified command were often part of the unit allegedly responsible for the killings and would claim they were powerless to investigate their superiors.

[12] No further details were provided by the State party.

4.2 The State party also submitted that investigations were under way in relation to the other incidents that took place on 11 February 2004. For example, the corporal who was allegedly responsible for the death of Ms. R.R. and who fled after the incident, was arrested by police and was facing trial for homicide in the Kavre District Court. The State party argues that domestic remedies have not been exhausted, as the facts complained of in the present communication are still under investigation. The State party pledges its commitment to conduct appropriate and comprehensive investigations into all the cases of alleged human rights violations that took place during the 10-year-long armed conflict and has already "acted in the direction of finding appropriate transitional justice mechanisms".

4.3 The State party indicates that, on 11 February 2004, Shree brigade No. 9 in Bhakundebesi carried out an operation in the Pokhari Chauri area of Kavre District. In the course of that operation, the security team searched a number of houses, as they had been informed that terrorists were hiding in the area. The security team reached the house of Subhadra Chaulagain, a terrorist suspect. Despite requests, she did not open the door for 15 minutes. When it was opened and the security team entered the house, another terrorist suspect jumped out of the window. While some of the security officers were climbing up the ladder, they noticed that Subhadra was trying to run away. She was then arrested. One pistol and five rounds of bullets were found on her. When questioned, she immediately admitted that she was a terrorist. Subhadra stated that many terrorists were hiding in the village and offered to indicate their homes. She was with the security team when the houses were being searched. While the search was going on, she made an attempt to run away. The subsequent action by security officers "in order to take her under control unfortunately resulted in her death". The State party adds that officers did not torture or rape Ms. R.R.

4.4 With regard to the investigation, the State party states that the battalion commander in charge of the operation in the Pokhari Chauri area on 11 February 2004 submitted a report about the incident, which was later found to be false. A Court of Inquiry was formed under the chairmanship of the battalion's second-in-command. Since satisfactory information could not be obtained from the Court of Inquiry either, the army headquarters formed another Court of Inquiry which, after due investigations, recommended the establishment of a court martial. The court martial, established under the then prevailing Army Act (1959), rendered its judgment, according to which: (a) the battalion commander was convicted of submitting a false report about the incident, and proved liable to reprimand; (b) the Court of Inquiry formed under the chairmanship of the battalion's second-in-command was found to have prepared a report "without taking stock of the truth of the matter" and the second-in-command was, therefore, punished with withholding of promotion for one year; (c) lieutenant S.B. deputed as the commander of the operation was convicted of giving orders to use excessive force, which resulted in the death of Ms. R.R., and was punished with imprisonment of four months and withholding of promotion for three years; and (d) one warrant officer-II deputed in the operation was convicted of provocation by making inappropriate suggestions to his commander and imprisoned for four months. The State party adds that a case of homicide has been filed in the Kavre District Court against the alleged perpetrators, including lieutenant S.B., and that the case is currently sub judice.

Author's comments on the State party's observations on admissibility

5.1 On 6 June 2011, the author commented on the State party's observations on admissibility. The author submits that the State party's assertions are unsubstantiated by any evidence. The author submits that the State party appears to rely on two main contentions to support its argument that the communication is inadmissible: (a) that a remedy has been and is being provided because the circumstances have been examined by a court martial and the perpetrators have been punished for the violation or are in the process of being tried by the civilian courts; and (b) that investigations are ongoing in accordance with domestic law and that domestic remedies have therefore not been exhausted.

5.2 With regard to the first contention, the author notes that, in its observations, the State party gives the misleading impression that military personnel have been punished by court martial and are currently being prosecuted in the civilian courts in relation to the present case. He argues that that is not, however, correct. While it appears that the circumstances of Subhadra's killing were examined by a court martial in 2005, the punishments arising out of that court martial and the later prosecutions referred to relate not to the murder and cruel, inhuman and degrading treatment of the author's daughter, but to human rights abuses committed against other individuals from the same village on the same date, namely Ms. R.R. and Mr. T.L. The State party relies on two "Courts of Inquiry", which it admits were based on fabricated facts, and a court martial carried out in relation to the "incident", that is, the events in the village that night as a whole, as showing that it is committed to investigating and prosecuting perpetrators in the present case. Not only were those military tribunals highly irregular and completely unsatisfactory as a remedy, but they did not in any event result in punishment for the murder and ill-treatment of the author's daughter. The irrelevance of those so-called "investigations" and court martial as a remedy in the present communication are demonstrated by the fact that he was not even aware of their existence when filing his communication to the Committee.

5.3 The author's legal representatives only became aware of those proceedings in late March or early April of 2011, when they informally received an English translation of the court martial decision dated 28 August 2005. The copy of the decision shows that the court martial found, inter alia, that Subhadra was killed in action when trying to escape from a security cordon. The court martial did not find any person responsible for the killings of any of the three victims. It found, however, that the circumstances of arrest and killing of the author's daughter could be seen as "normal". It considered that the killing of Ms. R.R. and Mr. T.L. resulted from the use of excessive force and that the "irresponsible act" of leaving behind the bodies of those victims "inflicted a negative impact on the image of the Army". For those acts, it found twelve army personnel guilty of offences under sections 54 and 60 of the Military Act 1960 (2016BS) (violation of order and discipline and crimes under other laws), but imposed punishment on only three — the three personnel officially before the court martial. It also found that the commander of the battalion had knowingly prepared and submitted a false report about the incident in a "cover-up" attempt and that the second in command had not conducted the first court of inquiry properly, taking the facts presented to him at face value.

5.4 No punishments were handed out by the court martial in relation to Subhadra's killing. Even if they had been, the punishments would be entirely inadequate as they were imposed for disciplinary offences and unspecified "other crimes", rather than for unlawful arrest, ill-treatment and killing. Moreover, the penalty pronounced was extremely low.

5.5 The case of homicide filed in the Kavre District Court against the alleged perpetrators, including lieutenant S.B, as well as the arrest and prosecution of a corporal for the killing of Ms. R.R., do not relate to the ill-treatment and killing the author's daughter, but only to the murder of Ms. R.R. committed on the night of 12 to 13 February 2004 by lieutenant S.B. and corporal K.K. The author's legal representatives have made enquiries of the Kavre DPO and have been informed that no prosecutions have been filed in relation to Subhadra's ill-treatment and killing.

5.6 The only person to have been arrested since the issue of the arrest warrants for the murder of Ms. R.R. is corporal K.K., who was detained on 27 September 2010. His prosecution had not yet proceeded and he had a pending petition for habeas corpus before the Supreme Court. His petition had been supported by the Nepal Army, on the basis that he should be tried by a military court and should be handed over by the police to the Army. The arrest warrant for lieutenant S.B. for the murder of Ms. R.R. had not been executed, despite the fact that he was still a serving officer in the Nepal Army. In fact, the Army returned the arrest warrant to the Kavre District Court in February 2011 with a letter attached that stated that, as lieutenant S.B had already been tried and convicted before a

court martial, he could not be tried again in civilian courts because of the principle of double jeopardy. The author argues that the difficulties in bringing prosecutions because of obstruction by the Nepal Army, even when arrest warrants have been issued, follows a pattern shown in other cases. Furthermore, there are strong indications that political will to follow through on prosecutions is lacking.[13]

5.7 The military investigations and court martial do not show that the State party has been fulfilling its obligations to investigate and prosecute the violation and to provide a domestic remedy. As a matter of principle, a military tribunal is an entirely inappropriate forum for investigating and trying any member of the military suspected of involvement in the ill-treatment and killing of a civilian. The jurisdiction of military courts should be limited to offences of a strictly internal, military nature committed by military personnel, which largely means internal disciplinary measures. Their jurisdiction should be set aside in favour of the jurisdiction of the civilian courts to conduct inquiries into serious human rights violations, including extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.[14] The author argues that investigation and prosecution of serious human rights abuses by a military tribunal in and of itself violates the victim's right to an effective remedy under the Covenant. Not only is there a lack of independence of the investigator and decision maker, and incentives for the violation to be minimized or covered up, but the victim and/or his or her family members are not involved in the proceedings.

5.8 The author argues in great detail that the court martial held to examine the "incident" in Pokhari Chauri on 12 to 13 February 2004 fell short of the requirements that an investigation must meet to satisfy the obligation under the Covenant to enable the provision of an effective remedy. Those failings include the facts that: (a) the court martial was patently not impartial or independent, because it was made up of members of the military within the same hierarchical and disciplinary structure as those accused; (b) the court martial was not competent or qualified to investigate or try allegations of serious violations of human rights; (c) the families of the victims, including the author, were not involved in the proceedings and were not even aware of their existence until nearly six years later; and (d) the proceedings were not transparent. Not only was the decision of the court martial not released; to the knowledge of the author's legal representatives, the many documents listed in the court martial decision have not been provided to the Kavre DPO. The holding of a military tribunal to investigate those violations further breached the author's rights under articles 6 and 7, read in conjunction with article 2, paragraph 3 of the Covenant. It certainly does not amount to a remedy for the violations under the Covenant and the fact that a court martial has been held does not make his claim inadmissible.

5.9 With regard to the State party's contention that domestic remedies have not been exhausted, the author reiterates his initial position that the application of remedies has been unreasonably prolonged, and that those remedies are not effective in practice. In the nearly eighteen months after the Supreme Court's mandamus order was issued, very little was done. To his knowledge, the police had not interviewed any of the members of the army patrol named in the FIR. The fact that the police took some first concrete steps, notably to record depositions of two witnesses on 23 April 2010 and to visit the crime scene on 21 January 2011, in relation to the complaint which was made to the police more than seven

[13] The author refers to a statement made on 20 May 2011 by the Deputy Prime Minister and Minister for Home Affairs that "cases of a political nature and related to the conflict time should be quashed". Available from www.myrepublica.com/portal/index.php?action=news_details&news_id=31508.

[14] The author refers to principle 29 of the updated Set of Principles.

years ago is, in the author's opinion, compelling evidence that the application of the remedy in the present case has been unreasonably prolonged.[15]

5.10 The author submits that any remedies which appear to be available in law are not effective and available in practice. In particular, torture and ill-treatment have not been criminalized under domestic law, and so cannot be prosecuted in domestic courts.[16] In the circumstances outlined above, and in the light of the fact that not one person has yet been brought to justice for the crimes committed during the armed conflict, it is clear that any potential remedy under domestic procedures is illusory, and cannot be seen to be available or effective.

5.11 The author notes the State party's commitment to conducting an inquiry and investigation into the cases of alleged human rights violations during the conflict and the fact that it has taken steps to find appropriate transitional justice mechanisms. With regard to that argument, the author holds that, at the time that he submitted his comments, the potential to establish transitional justice mechanisms in the future did not affect the fact that the application of remedies in the present case had been unreasonably prolonged. Furthermore, such mechanisms were not yet available and, if available in the future, would not be able to provide an adequate remedy in respect of the violations alleged.

5.12 Moreover, the Truth and Reconciliation Commission to be established would not be a judicial body. It would not provide an adequate remedy for those serious violations, and its potential creation was irrelevant to the question of whether or not remedies had been exhausted.

Committee's decision on admissibility

6.1 At its 104th session, held on 8 March 2012, the Committee examined the admissibility of the communication.

6.2 The Committee ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. Regarding the author's claim under article 26, the Committee considered that the author had failed to substantiate, for purposes of admissibility, that he had been a victim of discrimination and declared the claim inadmissible pursuant to article 2 of the Optional Protocol.

6.3 With respect to the requirement of exhaustion of domestic remedies, the Committee considered that the future transitional justice mechanisms, such as the Truth and Reconciliation Commission, would not be able to provide an adequate remedy in respect of the violations alleged in the present communication and recalled its jurisprudence[17] that in cases of serious violations a judicial remedy was required. As to whether there existed ongoing proceedings regarding the issues related to the communication, the Committee noted the author's attempts to obtain a domestic remedy through the Kavre DPO, the NHRC and the Supreme Court since 2004 and considered that the State party had not demonstrated that the continuing investigation carried out by its authorities, more than eight

[15] The author refers to communications No. 687/1996, *Rojas García v. Colombia*, Views adopted on 3 April 2001, paras. 7.1 and 10.2; No. 778/1997, *Coronel et al. v. Colombia*, Views adopted on 24 October 2002, paras. 6.2, 7.4, 8.2 and 9.1; and No. 1432/2005, *Gunaratna v. Sri Lanka*, Views adopted 17 March 2009, para. 7.5.

[16] The 1990 Constitution of Nepal and the 2007 Interim Constitution of Nepal both address crimes of torture and inhuman treatment. The 1990 Constitution did not define torture as a crime. The Interim Constitution of Nepal established torture as a criminal offence, but to date no bill providing criminal penalties for torture has been passed by the Nepalese legislature. Therefore, torture functionally remains only a civil offence.

[17] See communication No. 1761/2008, *Giri v. Nepal*, Views adopted on 24 March 2011, para. 6.3.

years after the killing of the author's daughter, was effective, in light of the serious and grave nature of the alleged violations, and that the delay had been unreasonably prolonged.[18] Accordingly, the Committee concluded that it was not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee declared the communication admissible with respect to the claims under articles 6, 7, 9 and 10, all read in conjunction with article 2, paragraph 3, in relation to the author's daughter; as well as with respect to article 7, read in conjunction with article 2, paragraph 3, of the Covenant, with respect to the author.

State party's observations on the merits

7.1 By note verbale of 19 April 2013, the State party submitted its observations on the merits and reiterated that the author had not exhausted domestic remedies.

7.2 Taking into consideration the recommendation of the NHRC, in February 2010 the State party provided the author with 100,000 rupees as "interim relief" and later another 200,000 rupees, which were collected by him from the Kavre District Administration Office.

7.3 Article 33 (q) and (s) of the Interim Constitution of Nepal 2007 and Section 5.2.5 of the Comprehensive Peace Agreement provided for the establishment of a transitional justice mechanism to address serious violations of human rights and provide justice to the victims of the armed conflict. The process of establishing that mechanism could not be completed owing to the expiry of the term of the Constituent Assembly. However, on 13 March 2013, the President promulgated the Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission (the Ordinance). Given that context, the State party maintains that it would be inappropriate for the Committee to continue considering the present communication and adopt views thereon and requests the Committee to discontinue the communication.

7.4 The objectives of the high-level Commission on Investigation of Disappeared Persons, Truth and Reconciliation are: (a) to investigate gross violations of human rights, including enforced disappearances during the armed conflict, and ascertain the truth about the persons involved in those incidents during the course of the armed conflict; (b) to end the state of impunity by bringing perpetrators involved in serious violations under the ambit of the law; and (c) to create a conducive environment for reconciliation in society and to submit a report containing recommendations on reparation for victims. The Commission's membership, with persons from different parts of the country and social sectors, will ensure its independence, impartiality and competence.

7.5 According to the Ordinance, "serious violations of human rights" means, among other things, the following acts carried out systematically or targeting unarmed persons or the civilian population: murder; abduction and hostage taking; disappearance; physical or mental torture; rape and sexual violence; and any type of inhuman act committed in violation of international human rights or humanitarian law, or other crimes against humanity. The Commission will exercise its jurisdiction over serious human rights violations committed during the armed conflict, from 13 February 1996 to 21 November 2007, by State agents and the Communist Party of Nepal (Maoists). Therefore, the allegations made by the author of the present communication fall under the jurisdiction of the Commission.

[18] Ibid., para. 6.3.

Author's comments on the State party's observations

8.1 On 7 July 2013, the author provided his comments on the State party's observations. He held that those observations do not provide information which would alter the Committee's decision on admissibility.

8.2 The author reiterates his allegations regarding the proceedings held by the court martial and argues that gross violations of human rights must be investigated and prosecuted by the civilian legal system, and that in any event, the court martial fell far short of the standards of an investigation and prosecution required to fulfil the right to an effective remedy under the Covenant.

8.3 At the time he submitted his comments, the Ordinance was on hold, as the Supreme Court had issued an injunction against its implementation on 1 April 2013. However, even if the Ordinance were operational, it should not change the Committee's findings regarding admissibility.

8.4 The five-member Commission provided for under the Ordinance is not a judicial body. It cannot hold perpetrators criminally responsible and impose sentences on them. Nor can it order binding reparation awards to victims. Accordingly, even if established, it cannot provide an adequate remedy.

8.5 In practice, the Ordinance blocks access to judicial remedies for serious violations of human rights, as the process for investigating crimes and initiating prosecutions is not clearly established and the Ordinance allows for abusive delays and impunity. It is also unclear whether the Ordinance allows amnesties for serious violations of human rights.

8.6 The Ordinance does not specify reparation as a right of the victim, or set out the basis on which it should be awarded in a manner that is in line with international human rights law. Its implementation would therefore leave the provision of reparation entirely to the discretion of a non-judicial body, and close access to normal judicial remedies, in violation of the rights of victims to an effective remedy under article 2, paragraph 3, of the Covenant.

8.7 The author rejects the State party's statements about his daughter and the events of 12 February 2004, in particular her characterization as a "terrorist"; that she was carrying a pistol and five rounds of bullets; that she immediately admitted that she was a terrorist and indicated that many terrorists were hiding in the village, when questioned; and that she attempted to run away. In the face of the credible and detailed evidence provided in his communication, and in the absence of documentation, evidence or satisfactory explanations by the State party, the author submits that his allegations have been substantiated.

8.8 The author submits that the Committee should not give weight to the findings of the court martial because of its clear flaws as a fact-finding mechanism. If the findings were accepted, the Committee should take into account the following statement issued after the court martial:

> "…security forces took [Subhadra] along in the house shown by her and were interrogating people there when they saw [her] doing suspicious activities after which they tied up her hands with a shawl and a piece of cloth and kept her in the front yard of the house where she untied her hands and pushed the sentry who was nearby and fled after which sentry Corporal K.K. hit her with an INSAS rifle whereby she fell down in the garden and Sergeant I.K.S. opened fire two rounds of bullets on her and soon after that Sergeant S.B.R. shot one round of bullet from a pistol in her temple, and as she had not died even after all that warrant officer 2 D.T.M. made nearby sentry to hit her with a rifle butt and she died after being hit by the rifle butt in her temple and the team under the command of warrant officer 2 returned to Lieutenant S. as per his orders".

Those facts, as described, show an unnecessary and disproportionate use of force that amounts to a violation of article 6 of the Covenant.

8.9 The author received 100,000 rupees as interim relief in 2008 and another 200,000 rupees in 2010. However, despite several requests to the local administration, he has not been provided with the 200,000 rupees which the NHRC recommended that the Government provide to him. In that respect, he claims that interim relief is humanitarian assistance rather than reparation, and does not relieve the State party of its obligation to provide him with an effective remedy.

8.10 Given the developments since the filing of the communication, the author makes two additional requests for relief in his case and requests the Committee to recommend the State party to: (a) ensure the prompt provision to him and to the NHRC of the full records of the military investigation into the events in Pokhari Chauri Village on 12 and 13 February 2004, including the full records of the proceedings of the two courts of inquiry and court martial held to examine the facts, as well as all evidence, including witness statements, tabled before them; and (b) repeal the Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission, and ensure that any replacement legislation is compliant with the State party's obligations to provide an effective remedy under the Covenant.

Further submissions from the parties

9.1 On 4 July 2014, the author informed the Committee that on 25 April 2014, the State party's Parliament had adopted Act 2071 (2014) creating the Truth and Reconciliation Commission and the Commission on Investigation of Disappeared Persons (the Act).

9.2 The author indicates that the Act is applicable to all cases of "serious violations of human rights" committed during the armed conflict period, and argues that several provisions are incompatible with international human rights standards. Notably, the Act confers on the Commissions the power to recommend amnesties for gross violations of international human rights law or serious violations of international humanitarian law, such as the ones raised in the present communication; the Commissioners lack guarantees of independence and impartiality; and the Act fails to recognize the victims' right to full reparation.[19] Should the Committee find that the Covenant has been violated in the present case, the Committee could recommend that the State party amend the Act, following appropriate consultation with victims, their families, civil society and the NHRC. In particular, the State party should: (a) remove the power to grant amnesty for gross violations of the Covenant; (b) ensure that gross violations of the Covenant are the subject of criminal investigation and that those responsible are brought to justice, including by ensuring that decisions not to prosecute are judicially reviewable; (c) remove the power "to bring reconciliation" between victims and perpetrators without the consent of the victim; (d) guarantee the impartiality and independence of Commissioners; and (e) recognize the

[19] The author refers to the Technical Note of the Office of the United Nations High Commissioner for Human Rights (OHCHR): "The Nepal Act on the *Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014)* — as Gazetted 21 May 2014", available from www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf, and the press release entitled "Nepal: Truth-seeking legislation risks further entrenching impunity, alert UN rights experts", issued on 4 July 2014 by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14824&LangID=E.

right of victims to reparation, which may consist of restitution, compensation, rehabilitation, measures of satisfaction and guarantees of non-recurrence.

10. On 11 August 2014, the State party informed the Committee about the adoption of the Act by its Parliament; reiterated its observations on the merits (see paras. 7.3 and 7.4 above); and maintained that it would be inappropriate for the Committee to continue considering the present communication. It further held that it had established programmes in order to provide rehabilitation and financial and non-financial support to victims of the armed conflict and their families.

Consideration of the merits

11.1 The Human Rights Committee has considered the present communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

11.2 The Committee takes note of the author's allegations that on 12 February 2004, his daughter was arbitrarily executed by members of the RNA, after being illegally arrested in the middle of the night, without an arrest warrant, tortured, severely ill-treated and humiliated by a group of soldiers; that on the following days he lodged a complaint with the Chief District Officer; that on 29 February 2004, he also made an application before the National Human Rights Commission, and on 8 June 2006, he filed a First Information Report for murder with the District Police Office. As the police did not carry out any investigation, he submitted a writ petition to the Supreme Court. He further claims that, despite the recommendation made by the NHCR on 14 June 2005 and the Supreme Court mandamus order of 14 December 2009, to date, no investigation has been carried out into his daughter's killing. The Committee also takes note of the author's allegations that he was not aware of the proceedings carried out by the court martial concerning the events that took place in Pokhari Chauri on 12 and 13 February 2004; that the decision of the court martial of 28 August 2005 was not made public; that the documents and evidence listed in the decision have not been provided to the Kavre DPO or to him; and that the court did not punish the perpetrators of the crimes committed against his daughter. The Committee also takes note of the State party's statement that further investigations regarding the circumstances of the death of the author's daughter are still ongoing; and that the case would fall under the jurisdiction of the Commissions on Investigation of Disappeared Persons and Truth and Reconciliation, established by the Act.

11.3 The Committee recalls that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.[20] The Committee also recalls that, under article 2, paragraph 3, of the Covenant, States parties must ensure that all persons have accessible, effective and enforceable remedies in order to claim the rights enshrined in the Covenant. The Committee further recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, particularly the fact that, when investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. Those obligations arise notably in respect of violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment, and summary and arbitrary killing (para. 18).

11.4 In the present case, there is no dispute about the fact that the author's daughter was arrested by soldiers of the Royal Nepal Army without an arrest warrant and that she died as

[20] See the Committee's general comment No. 6 (1982) on the right to life, para. 3.

a result of the use of firearms by those soldiers, although the parties disagree as to the circumstances of her death. In any case, the Committee considers that the killing of the author's daughter by the Army warranted a speedy and independent investigation. Deprivation of life by State authorities is a matter of utmost gravity;[21] it requires a prompt and adequate investigation, with all the guarantees set forth in the Covenant, and the appropriate punishment of the perpetrators. The Committee observes that, shortly after the death of his daughter, the author filed a complaint with the Chief District Officer, and on 8 June 2006, he filed a First Information Report for murder with the District Police Office, but to no avail. In June 2005, the NHRC found that his daughter had been unlawfully killed and recommended that the Government identify and take legal action against the perpetrators. Likewise, on 14 December 2009, the Supreme Court issued a mandamus order for a prompt investigation, but no progress was achieved. Despite the author's efforts, more than ten years after his daughter was killed, no investigation has been concluded by the State party in order to elucidate the circumstances surrounding her arrest and death and no perpetrator has been tried and punished. The State party refers to ongoing investigations, but the status of such investigations and the reasons for their delay remain unclear.

11.5 The Committee considers that the State party has failed to conduct a prompt, thorough and effective investigation into the circumstances of the arrest, treatment and killing of the author's daughter. Accordingly, the Committee concludes that the lack of an effective investigation to establish responsibility for the arrest, treatment and killing of the author's daughter amounts to a denial of justice and a violation of her rights, under articles 6, paragraph 1, 7, 9 and 10, all read in conjunction with article 2, paragraph 3, of the Covenant.

11.6 The Committee takes note of the author's allegation that the treatment to which he was subjected by the Royal Nepal Army forces, including being forced to watch the execution of his daughter, the ensuing absence of proper investigation and the impunity of the perpetrators, amount to treatment contrary to article 7, read in conjunction with article 2, paragraph 3, with respect to himself. The Committee observes that all the author's efforts to obtain justice from the authorities led to nothing and that he and his family have only received 100,000 rupees and 200,000 rupees as interim relief in 2008 and 2010, respectively. The Committee considers that the interim relief granted does not constitute an adequate remedy commensurate with the serious violations inflicted. Accordingly, the Committee considers that the experiences that the author was forced to go through, including those resulting from the State party's failure to provide a prompt, thorough and effective investigation, constitute treatment contrary to article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party violated the rights of the author's daughter under articles 6, paragraph 1, 7, 9 and 10, all read in conjunction with article 2, paragraph 3; as well as the author's rights under article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

13. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which includes an effective and complete investigation of the facts, the prosecution and punishment of the perpetrators, full reparation and appropriate measures of satisfaction. The State party is also under an obligation to take steps to prevent similar violations in the future.

[21] See communication No. 1275/2004, *Umetaliev and Tashtanbekova v. Kyrgyzstan*, Views adopted on 30 October 2008, para. 9.5.

14. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views and to have them translated in the official language of the State party and widely distributed.

Appendix

[Original: Spanish]

Partly dissenting opinion of Committee members Víctor Manuel Rodríguez-Rescia and Fabián Omar Salvioli

1. In the case of communication No. 2018/2010, we agree with the decision of the Human Rights Committee to find violations of the rights defined in articles 6, paragraph 1, 7, 9 and 10, all read in conjunction with article 2, paragraph 3, in respect of the author's daughter (Subhadra Chaulagain) and article 7, read in conjunction with article 2, paragraph 3, in respect of the author (Kedar Chaulagain).

2. However, we believe that the Committee should also have found a violation of those same rights independently rather than solely by reason of the lack of an effective investigation (which is unfortunately what the Committee concluded by reading articles 6, 7, 9 and 10 in conjunction with article 2, paragraph 3, of the Covenant). We are of the view that the decision on the admissibility of this case, as adopted by the Committee at its 104th meeting on 8 March 2012, was unnecessarily restrictive and legally flawed. Nor do we see why the Committee decided to analyse the merits of the case separately from the question of its admissibility.

3. In its decision on the merits, the Committee could have correctly applied the Covenant and reached the conclusion that there had been a direct violation of the rights in question. The problem frequently faced by the Committee is more structural in nature and has to do with the incomprehensible — and, we believe, misguided — practice of refraining from applying the principle of *iura novit curia* in the consideration of communications.

4. The Committee should analyse the cases it has before it based on the established facts and, on that basis, should determine which Covenant rights have been violated, regardless of whether that coincides with what has been claimed by the authors of the communication.

5. It leads to unreasonable outcomes if, as in this case, the Committee devotes more attention to the numbers of the articles invoked in the communication than to an examination of the alleged and proven facts and of how the violations have been substantiated. The terrible events described by the author speak for themselves, and the complaint leaves no room for doubt either.[a]

6. Furthermore, the fact that in the present case, the author's daughter was 17 years old when the events occurred means that the Committee could have sought to determine whether there had been a violation of article 24 of the Covenant, which requires States parties to provide special measures of protection for all children and adolescents. The acts committed against the victim by members of the Royal Nepal Army engage the international responsibility of the State in the light of its obligations under article 24. In addition to its responsibility for the reprehensible arrest, torture and extrajudicial killing of Subhadra Chaulagain, the State had a duty to conduct a detailed, thorough investigation into the facts of the case. We therefore believe that there was a separate violation of article 24 of the Covenant and a violation of article 2, paragraph 3, read in conjunction with article 24.

[a] See paragraphs 2.1 to 2.21 and 3.1 to 3.8 of the present communication.

7. The established facts are chilling: Subhadra was grabbed by the hair, hit on the head, taken from her house, insulted, threatened with death, interrogated under torture and brutally executed, and her body was kicked and stamped on, causing her intestines to spill out onto the ground. How is it possible for the Committee not to have found a direct violation of the victim's rights under articles 6, 7, 9, 10 and 24 of the Covenant in that case?

8. Accordingly, we believe that paragraph 12 of the communication should have been worded as follows: "The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party violated the rights of the author's daughter under articles 6, paragraph 1, 7, 9, 10 and 24 of the Covenant, both separately and when all are read in conjunction with article 2, paragraph 3; in addition, the State party violated the author's rights under article 7 and under article 2, paragraph 3, of the Covenant, read in conjunction with article 7". In addition, the reparations should have been commensurate with the grave human rights violations of which Subhadra Chaulagain and Kedar Chaulagain were the victims.

9. The Committee should review its method of examining cases and should follow the logical practice of international judicial and quasi-judicial bodies, which apply the law on the basis of the established facts, irrespective of the legal arguments made by the parties.

10. In so doing, the Committee will avert situations that oblige us to issue partly dissenting opinions such as in the present case and will be able to properly fulfil its role as a body for the protection of human rights within the framework provided by the International Covenant on Civil and Political Rights and the first Optional Protocol thereto.